

1 ☐ EXPEDITE  
2 ☐ Hearing is Set

3 Date:  
4 Time:

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8 **STATE OF WASHINGTON**  
9 **THURSTON COUNTY SUPERIOR COURT**

10 PREMERA, a non-profit  
11 corporation, and PREMERA BLUE  
12 CROSS, a nonprofit corporation,

13 Petitioners,

14 v.

15 MIKE KREIDLER, Insurance  
16 Commissioner for the State of  
17 Washington,

18 Respondent.

NO. 03-2-00112-8

DECLARATION OF  
PATRICK H. CANTILO

19 I, Patrick H. Cantilo, do hereby declare that the following facts are personally  
20 known to me and, if called upon to do so, I would testify to them.

21 1. I am now, and at all times pertinent herein was, a citizen of the United  
22 States and a resident of the State of Texas, over the age of eighteen (18) years, and  
23 competent to testify in a court of law.

24 2. I am a principal in the law firm of Cantilo & Bennett which has been  
25 retained by the Office of Insurance Commissioner of the State of Washington (OIC) to  
26 provide legal expertise with respect to the review of the transactions contemplated in

1 the administrative proceeding before the Insurance Commissioner of the State of  
2 Washington, *In the Matter of the Application Regarding the Conversion and*  
3 *Acquisition of Control of Premera Blue Cross and its Affiliates*, Docket No. G02-45  
4 (“Proposed Transaction”). The subject of the Proposed Transaction is Premera’s  
5 request for the approval of the Insurance Commissioner to convert from non-profit to  
6 for-profit status. Premera has submitted this request as a “Form A Statement.”

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8 3. In my capacity as a principal in Cantilo & Bennett, I have participated in  
9 the review of the Proposed Transaction including analysis of the Form A Statement for  
10 the purpose of preparing a report to the OIC. The report will address, *inter alia*,  
11 whether the Form A Statement complies with title 48 RCW, title 284 WAC, other  
12 applicable Washington statutes and regulations, and applicable federal statutes and  
13 regulations, and whether the OIC has a sufficient legal basis to conclude, and such  
14 information supports the conclusions that, the Proposed Transaction is economically  
15 viable and is fair and equitable to current and future policyholders, health care  
16 providers, and the public.

17 4. Premera is required to submit information and documents as part of the  
18 Form A Statement pursuant to the following: (a) chapter 48.31B RCW, the “Insurer  
19 Holding Company Act” (“IHCA”); (b) chapter 48.31C RCW, the “Holding Company  
20 Act for Health Care Service Contractors and Health Maintenance Organizations”  
21 (“HHCA”); and (c) related Washington Administrative Code provisions. (The IHCA  
22 and the HHCA are collectively referred to throughout this declaration as the “Holding  
23 Company Acts.” Due to the similarity of the IHCA and the HHCA, reference will be  
24 made only to the HHCA and related WAC provisions.)  
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1           5.       Specifically, Premera is required, inter alia, to “[f]ile as exhibits copies of  
2 all tender offers for, requests or invitations for, tenders of, exchange offers for, and  
3 agreements to acquire or exchange any voting securities of the health carrier and (if  
4 distributed) of additional soliciting material relating thereto, any proposed employment,  
5 consultation, advisory or management contracts concerning the health carrier, annual  
6 reports to the stockholders of the health carrier and the applicant for the last two fiscal  
7 years, and any additional documents or papers required by Form A or WAC 284-18A-  
8 300 or 284-18A-320.” This requirement is found at WAC 284-18A-910, Item 8(c).

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10           6.       Premera has attempted to comply with this requirement as to its proposed  
11 stock ownership plans by including Exhibit G-10 (“Description of Stock Ownership  
12 Plans”) in the Form A. As reflected in Exhibit G-10, “[i]t is anticipated that New  
13 PREMERA, as a stock corporation, will adopt one or more stock-based compensation  
14 plans covering employees, officers and directors, which may include stock options,  
15 restricted stock, stock appreciation rights, performance stock and performance awards,  
16 or such other stock programs as may be utilized by stock corporations.” (Form A,  
17 Exhibit G-10 at 1). Despite repeated requests, rather than providing these plans,  
18 Premera has identified, in general terms, “certain limitations and restrictions.” *Id.*  
19 Premera claims that it has not provided these plans because the plans have not been  
20 adopted. *Id.* However, Premera has not stated that it will not adopt a stock ownership  
21 plan.

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23           7.       In my experience reviewing transactions similar to this one, the terms of  
24 the stock plans that will be adopted are developed and submitted as part of the Form A  
25 Statement. Attached as Exhibit A to this Declaration is a description of my experience.  
26 If they are not submitted voluntarily in the initial filings of the insurer, the reviewing

1 regulators insist that they be filed before they will consider the Form A Statement  
2 complete. .Based upon Premera's representations in Exhibit G-10 and the experience of  
3 other conversions, it is reasonable to believe that Premera intends to adopt a plan, if the  
4 conversion is approved, to compensate its officers, directors, and employees through  
5 some form of stock ownership. As demonstrated by previous conversions /IPOs of  
6 non-profit Blue Cross Blue Shield Plans, such as those involving Anthem and Trigon,  
7 these types of plans have been adopted.<sup>1</sup>

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9 8. The requirements of the Form A Statement should not be circumvented  
10 by allowing an applicant to state that it plans on developing certain agreements, while  
11 claiming that it has not adopted those agreements. If that is the standard by which the  
12 Insurance Commissioner is to determine whether the Form A is complete, then an  
13 applicant potentially could use that same tack to circumvent other requirements of the  
14 Form A Statement. As an example, an applicant is required to disclose all agreements  
15 relating to funds that are borrowed with respect to the consideration involved in  
16 effecting a merger or other acquisition of control. *See* WAC 284-18A-910, Item 4.  
17 Using Premera's approach, an applicant could merely state its intentions rather than  
18 developing agreements that the applicant clearly intends to enter into with a lender. By  
19 further example, the applicant would be permitted to simply describe the terms of the  
20 acquisition of control without the production of key documents, thus, preventing the  
21 Insurance Commissioner from making a fully informed decision.  
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25 <sup>1</sup> WellChoice has not yet adopted a plan because it is restricted from doing so  
26 until November 2003. In addition, there is no public information available for any  
WellPoint plans.

1           9.     Premera has neither complied with the Form A's express requirements,  
2 nor has it complied with the spirit of the Form A requirements. Premera does state that  
3 if such plans are adopted, then, as a condition for approval, it shall abide by the  
4 limitations and restrictions provided in Exhibit G-10 of the Form A. (Form A, Exhibit  
5 G-10 at 1). However, this is not the standard by which the Insurance Commissioner  
6 must determine the completeness of the Form A. As discussed above, the Form A  
7 contemplates the production of these plans in order for the Form A to be complete,  
8 rather than the applicant's intentions to abide by certain general restrictions or  
9 limitations.  
10

11           10.    Perhaps, more importantly, these documents should be produced prior to  
12 the time in which to make a decision begins to run as contemplated in the Order entered  
13 by the Honorable Paula Casey on September 5, 2003. According to that Order, the  
14 Commissioner has only 60 days from September 5, 2003, in order to conduct a hearing  
15 and issue a decision with respect to the Proposed Transaction. Based on this  
16 interpretation, it is all the more necessary for key documents, which the applicant  
17 clearly intends to adopt, to be submitted as part of the Form A in order for the Insurance  
18 Commissioner to be able to conduct a hearing that provides for sufficient due process.  
19 Without the production of these documents as part of the Form A, and assuming  
20 Premera produces the documents within the 60-day time frame for a hearing, the  
21 consultants and interested parties would have even less time to evaluate the merits of  
22 the Proposed Transaction.  
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24           11.    In addition to Premera's failure to comply with the requirements of a  
25 completed Form A Statement, these documents are necessary to the consultants' review  
26 of the Proposed Transaction pursuant to the Holding Company Act's criteria for

1 approval. Under the Holding Company Acts, the Insurance Commissioner must  
2 approve the Proposed Transaction unless he determines, inter alia, the following: (1)  
3 the plans or proposals that the acquiring party has to liquidate the specific health  
4 carrier, sell its assets, consolidate or merge it with any person, or to make any other  
5 material change in its business or corporate structure or management are unfair and  
6 unreasonable to the health carrier's subscribers, and not in the public interest; and (2)  
7 the competence, experience, and integrity of those persons who would control the  
8 health carrier's operations are such that it would not be in the interest of the health  
9 carrier's subscribers and of the public to permit the acquisition of control. *See* RCW  
10 48.31C.030(5)(a)(ii)(C)(II)–(III). These requirements contemplate an evaluation as to  
11 the reasonableness or excessiveness of the plans due to the potential effect on  
12 management integrity, such as conflicts of interest, and whether the plans are otherwise  
13 not in the public interest. Although Premera has described generally the restrictions  
14 and limitations by which it intends to abide, these plans are often very complicated and  
15 require detailed review. It is important to understand what incentives are created by  
16 these plans. Agreements governing the dates and conditions upon which stock options  
17 may be awarded and exercised may well provide substantial incentives for management  
18 to conduct the companies' affairs in a manner inconsistent with the best interests of  
19 policyholders and the public. Without the plans, the consultants will be unable to make  
20 a complete determination that satisfies the contemplated scope of review under the  
21 Holding Company Acts.  
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24 I declare under penalty of perjury under the laws of the State of Washington that  
25 the foregoing is true and correct.

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1 September 11, 2003 at Richmond, Virginia.

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3 PATRICK H. CANTILO  
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